

Assembly Human Services Committee – Overviews of Major Issue Areas (2009-2010)

CALIFORNIA WORK OPPORTUNITY & RESPONSIBILITY TO KIDS (CalWORKs)

As of March 2010, 562,000 California families¹ relied on CalWORKs, the state's welfare-to-work program, for monthly income assistance and employment-related services in order to become self-sufficient. CalWORKs was created in 1997 as part of California's implementation of federal welfare reform. The State Department of Social Services (DSS) administers the program at the state level, and county welfare departments administer it locally.

CalWORKs is funded by the federal Temporary Assistance for Needy Families (TANF) block grant, state General Fund dollars (also known as Maintenance of Effort, or MOE dollars), and county funds. The program's combined federal, state, and local 2009-2010 appropriation was \$5.9 billion.

There are three basic kinds of CalWORKs families: single parent, two-parent, and "child only." Child only families have no eligible adult (e.g. the parents are undocumented, or the adults are being sanctioned for violation of program rules).

The maximum monthly aid for a typical family of a mother and two children is currently \$694. Reduced from \$723 to \$694 in July 2009, the grant is now at the same level as a family of three would have received in 1989. A statutory cost-of-living adjustment has been applied to CalWORKs benefits since 1971, but this has often been suspended, and in July 2009 was eliminated permanently. With a cost-of-living adjustment applied annually, the 1989 grant amount of \$694 would currently be \$1,222 in 2010 dollars—a difference of \$528².

Generally speaking, adults are limited to a total of 60 months of CalWORKs cash assistance (The new time limits that take effect on July 1, 2011 are outlined under Major Budget Changes to CalWORKs in 2009-10). If a family has not entirely left aid by that time, the children qualify for "safety net assistance" until they reach age 18. Some families qualify for hardship exceptions or extensions from the limit if they are disabled, of advanced age, or have been unable to engage in employment because of domestic abuse or care for a disabled family member. Months do not count toward the 60-month limit if child support payments from a non-custodial parent have compensated the state for the aid paid.

¹ <http://www.cdss.ca.gov/research/res/pdf/caltrends/CA237Caseload.pdf>

² http://www.bls.gov/data/inflation_calculator.htm

Work requirements

Able-bodied adult parents are required to participate in 32 hours per week (or 35 hours for a two-parent family) of welfare-to-work activities designed to lead to employment and self-sufficiency. About half of adult CalWORKs recipients are employed at least part-time. Others participate in job search, vocational training, education, or services such as mental health, domestic violence prevention or substance treatment. An "earned income incentive" excludes the first \$225 in earnings and half the remainder from being counted against a family's CalWORKs payment, allowing families to increase their net income by working.

Federal law requires states to meet a minimum Work Participation Rate (WPR). This rate shows the designated percentage of eligible TANF adults participating in work-related activities. California must meet a rate of 50% of the state's entire caseload (All Families Rate) and 90% of the Two-Parent caseload. This requirement can be reduced by a Caseload Reduction Credit (CRC), which is based on the percentage caseload reduction since 2005. In 2006, Congress enacted the Deficit Reduction Act (DRA), reauthorizing the TANF block grant for an additional five years and imposing more stringent work standards states must meet to avoid federal penalties. In response, California adopted a set of reforms in its 2006-07 budget designed to improve counties' ability to meet the new WPRs while preserving the availability of services to meet differing clients' needs and the safety net for children.

In February of 2008, new federal regulations implementing the DRA were published, effective October 1, 2008. Primary among the many regulations are restrictions on the types of expenditures that may be counted as MOE and changes to the CRC calculation that are derived from the excess MOE. These changes have the negative effect of significantly reducing California's CRC by 50%. Because excess MOE could previously be used to augment WPRs, this makes complying with the federal WPRs very difficult, triggering federal penalties. In 2007, California did not meet the All Families Rate, but the penalty was ultimately waived by the federal government due to its recognition that states had great difficulty meeting the "significant challenges in meeting these new (DRA) requirements." In 2008, California again did not meet the All Families Rate. It remains to be seen whether or not the penalty will be waived again. Up to a 5% penalty can be assessed on California's \$3.7 billion federal TANF block grant.

TANF Reauthorization in 2010

The \$3.7 billion TANF block grant that California receives from the federal government was scheduled for reauthorization in 2010; however, Congress did not work on legislation to reauthorize it. Instead, on September 30th, President Obama signed into law a bill that extended the TANF block grant through December 3, 2010, as part of the "continuing resolution" that funds government programs.

The TANF block grant provides the funding to states that supports cash assistance programs and a wide range of other benefits and services for low-income families. If, as hoped, Congress acts in 2011 to extend and improve temporary assistance because reauthorization it will offer a fresh opportunity for advocates to press Congress for measures to make TANF responsive to the

mothers and children the program is intended to serve. While TANF has been a success for some California families, in recent years it has become less flexible and less effective in moving families out of poverty due to the challenges mentioned earlier in regards to the DRA.

Major Changes to CalWORKs in 2009-10

Governor Schwarzenegger proposed to eliminate the program entirely under his last two budget proposals, which would have made California the only state in the nation without a welfare program. Additionally, eliminating CalWORKs would cause California to permanently lose the state's annual \$3.7 billion TANF block grant, as well as hundreds of millions in additional federal funds provided by the American Recovery and Reinvestment Act of 2009 and related economic activity that comes with large infusions of money into our economy.

While the elimination of the program was ultimately avoided, as one of his last acts in office, the Governor vetoed \$256 million in funding of Stage 3 Child Care, which effectively would have eliminated subsidies for families who have successfully exited the welfare-to-work program needed to keep their children in safe, supervised settings while they work or attend school. A total of 55,000 children would lose child care as of November 1, 2010. To avoid a disruption in child care services, and in coordination with Speaker Perez, the Chairman of the Assembly Human Services Committee, Jim Beall, reached out to the First 5 Commissions to provide bridge funding to keep Stage 3 going and ultimately these parents working until a permanent solution could be found. As well, as this publication goes to print, advocacy groups have temporarily stopped the elimination of Stage 3 when an Alameda County Superior Court judge issued an emergency order in *Parent Voices Oakland v. O'Connell*³. A hearing will be held to determine if the order will stay.

Final Budget Actions

- In 2009, grants were cut by 4% for a reduction of \$146.9 million
- Suspension of the July 2009 Cost-of Living-Adjustments (COLA) for grants: \$79.1 million
- Permanent elimination of the COLA, effective July 2010
- Cut \$528 million from CalWORKs and of that amount \$375 million from the county's operating funds. Counties have not had a cost-of-doing business increase since 2001 and report that they have been underfunded by approximately a billion dollars.

Changes Effective July 1, 2001

- Under new state time limits, adult recipients may receive aid up to 48 cumulative months. On the following 49th month, the adult portion of the grant is eliminated and the children's portion of the cash grant is provided under the Safety Net program for one year. After that year is up and the adult is still eligible, the adult receives his/her portion of the grant for the remaining 12 months left on the 60-month clock.

³ <http://www.wclp.org/Resources/WCLPContent/tabid/1088/smId/3613/ArticleID/714/reftab/1035/t/TRO-preserves-child-care-subsidies/Default.aspx>

- For families not complying with work requirements, stricter and graduated sanctions were created such as sanction months now count toward the 60-month time clock.
- Counties now must conduct a "Self Sufficiency Review" (SSR) for families who are not in compliance with work requirements with an emphasis on services and resources on how to assist the family increase their work participation hours or remove barriers that might prevent them from working. The penalty for not participating in an SSR is a 50% reduction on a family's cash grant.

Legislative Efforts

The recession had many negative effects on all Californians but was particularly hard on low-income families in the CalWORKs program who are trying to develop job skills and secure employment and become self-sufficient.

With a state unemployment rate at 12.4%⁴, accomplishing self-sufficiency became that much more difficult. As a result, many bills attempted to mitigate that difficulty by: a) excusing participants from work requirements because job supportive services were not available due to funding reductions in the program (**AB 510 (Evans)**), b) eliminating the eligibility requirement that a vehicle be counted (**AB 1058 (Beall)**), c) providing counties with technical support to encourage subsidized employment options (**AB 2004 (Beall)**), d) allowing participants in the Food Stamp Employment and Training program to fulfill their work requirement through a public service placement in a public or private nonprofit agency (**SB 1322 (Liu)**), and e) reducing the number of times a participant must report their income to the county thereby reducing the bureaucracy and saving scarce county time and money (**AB 1642(Beall)**).

⁴ http://www.edd.ca.gov/About_EDD/pdf/urate201010.pdf

CHILD WELFARE SERVICES/FOSTER CARE

The child welfare system in California is made up of public and private agencies, institutions, and programs responsible for responding to the nearly 500,000 reports of suspected child abuse and neglect filed each year by concerned professionals and community members. These organizations provide services to children who are victims or are at risk of becoming victims and their families.

After a concerned individual reports an allegation of abuse or neglect, a county social worker determines if an investigation needs to occur and how quickly. An investigation may end the intervention, or it may begin the family's further involvement in the child welfare system. Whenever possible, families are provided with assistance and services so that their children may safely remain in or return to their home. In some cases of imminent risk of harm to the child, temporary or permanent removal from the home is necessary. In April 2010, approximately 63,000⁵ children in California were living in out-of-home placements or foster care after being removed from their homes as a result of abuse or neglect.

The California Department of Social Services (DSS) is the principal entity responsible for the state's child welfare system, although each of the state's 58 counties administers its own child welfare program. Federal and state laws provide the framework for child welfare services, which are funded through a combination of federal, state, and county resources. Federal funding is generally available in cases where a child's parents have incomes below specified levels, which applies to approximately 75% of children in foster care.

The judicial system and the Departments of Alcohol and Drug Programs, Developmental Services, Education, Health Care Services and Mental Health, along with their county counterparts, also provide critical services to children and families involved in the child welfare system. Child welfare services include a variety of interventions designed to protect children such as: (1) emergency response to reports of suspected abuse and neglect; (2) family maintenance (time-limited protective services to families in crisis); (3) family reunification (time-limited intervention and support services to help create a safe environment to which a child who was removed from home could return); and, (4) foster or out-of-home care.

Most of California's approximately 63,000 foster children entered foster care because of neglect (rather than abuse or abandonment). Due to efforts aimed at reducing the length of stay for children in foster care, and moving toward permanent placements more quickly, California has managed to decrease its overall foster care caseload by 10% over the past 10 years despite a growth in the overall number of children in the state. While this trend is encouraging, children of color continue to be overrepresented in foster care. In 2010, children of color made up three-

⁵ Needell, B., Webster, D., Armijo, M., Lee, S., Dawson, W., Magruder, J., Exel, M., Cuccaro-Alamin, S., Williams, D., Zimmerman, K., Simon, V., Hamilton, D., Putnam-Hornstein, E., Frerer, K., Lou, C., Peng, C. & Moore, M. (2010). Child Welfare Services Reports for California. Retrieved 10/20/2010, from University of California at Berkeley Center for Social Services Research website. URL: <http://cssr.berkeley.edu/ucb_childwelfare>

quarters of the population (Black/African-American, Hispanic/Latino, Asian/Pacific Islander, Native American/Indian). Over the same period (2000-2010), California saw a 50% decline in the numbers of African-American children in foster care. These efforts must be applauded, but the state must not let up as African-American children are still more than five times as likely as white children to be in foster care as of 2009.

Foster care is intended to provide children with temporary out-of-home placements until they can safely return home or be permanently placed with relatives or other committed adults.

Placement options vary, and as of 2010, foster children were placed with foster family homes (22%), foster family agencies (46%), kin (17%), group home providers (15%), or in other living arrangements. Group care placements are the least preferred and most expensive of these major placement categories.

Given the scope and complexity of issues surrounding child welfare services, the Committee devoted much attention to the problems and concerns of abused and neglected children during the 2009-2010 Legislative Session. There were more bills affecting this subject than any other: 42 were referred to the Committee, 38 passed the Legislature and 25 were enacted into law.

The two forces wielding the most influence over child welfare and foster care policy over the session were the federal Fostering Connections and Increasing Adoptions Act (federal Fostering Connections Act) (Public Law 110-351) and the California budget. The federal Fostering Connections Act, signed into law by President Bush in late 2008 pushed forward changes related to adoptions, education, relative caregivers, sibling placement and the upper age limit for foster care. Over this legislative session, the federal Fostering Connections Act spurred no fewer than 10 bills. Although some of the proposed changes were required, as found in provisions of **AB 154 (Evans)**, **AB 743 (Portantino)**, **AB 770 (Torres)** and **AB 1933 (Brownley)**, the Legislature also seized on several optional provisions of the federal Fostering Connections Act, most notably with the passage of **AB 12**, the California Fostering Connections to Success Act.

Signed into law on September 30, 2010, AB 12 will opt California in to two optional provisions of the federal Act and bring newly available federal dollars into the state. First, AB 12 will convert the state's subsidized relative guardian program, also known as the Kinship Guardian Assistance Program (Kin-GAP), into two identical programs: one federally subsidized, and one state-funded for families not federally eligible. The state and counties have invested in Kin-GAP for over 10 years as it has successfully moved children out of foster care and into long-term, stable placements with family members who agree to guardianship. With the federal Fostering Connections Act, federal matching funds will be available in this program for the first time, resulting in tens of millions of general fund (GF) savings.

Second, AB 12 will phase-in an extension for foster care to eligible youth up to age 21 over three years, starting in 2012. Foster youth who "age out" of or "emancipate" from foster care at 18 or 19 are highly at risk as they transition to adulthood. When compared to children who were not in foster care, foster children are more than twice as likely to drop out of high school. Former foster youth also face unemployment and incarceration at rates far higher than the general population. According to some studies, 24% to 50% of former foster children become homeless within the first 18 months of emancipation. With the passage of AB 12, California joins states

such as Illinois and New York where transitional foster care services are available until the age of 21 and these outcomes have dramatically improved. As these two Fostering Connections Act changes are implemented, the landscape of the child welfare and foster care systems in California will change dramatically as a whole foster care system adjusts to balance the rights and responsibilities of *nonminor* dependents.

The other major influence in child welfare policy has been the strained California budget. In 2009, Governor Schwarzenegger unilaterally cut \$80 million GF, \$133 million total from the child welfare services budget through his line-item veto or "blue pencil" authority. Although the Legislature restored the \$80 million through the budget process, in 2010, Governor Schwarzenegger again cut the \$80 million with his blue pencil authority after the passage of the budget. It is still unclear what the total impact of this cut will be on the child welfare system down the line, but it has already meant that counties have had to lay off social workers, which has led to higher caseloads and potential negative impacts on the timeliness of child abuse and neglect investigations, as well as trending efforts toward family maintenance and reunification and family finding and engagement.

Over the course of the 2009-2010 Legislative Session, the courts also weighed in with decisions that have changed and shaped the direction of foster care policy significantly. Group home providers sued DSS in 2006 arguing that depressed group home rates ran afoul of the federal Child Welfare Act because they failed to meet the necessary costs associated with basic care and supervision of foster children. As these matters were being considered in the courts, the state took action in the 2010 budget to cut group home rates by 10%, but was ultimately prevented from doing so by the court. Ultimately, the United States Ninth Circuit Court of Appeals sided with the plaintiffs and the district court ordered an increase in group home rates of 32%⁶. As part of the 2010-2011 budget package, the Legislature established a group home rates working group to develop recommendations for how best to revise rates. Along with existing reforms found in the Residentially-Based Services pilot projects (**AB 2129 (Bass)**), wraparound services (**AB 1758 (Ammiano)**), and intensive treatment foster care practices, stakeholders will need to consider, not just what rates are paid, but how to create an overall system of care that encourages appropriate alternatives to long-term group home placements for children in foster care.

Looking back, other areas of intense debate and proposed reforms included educational stability (**AB 1067 & AB 1933 (Brownley)**, **AB 1943 (Fletcher)**, **SB 1352 (Wright)**) and data sharing related to foster children. With advances in technology, school districts and law enforcement agencies sought ways to communicate more effectively and to respond more quickly to the needs of foster youth (**AB 1148 & AB 1920 (Davis)**, **AB 1324 (Bass)**, **AB 2698 (Block)**, **AB 2229 (Brownley)**, **AB 2322 (Feuer)**). While there is certainly promise through technology to ensure that foster youth do not fall through the cracks of overwhelmed educational and child welfare systems, efforts to allow for a greater flow of information are often stymied by differing interpretations of state and federal privacy laws. Toward that end, the Administrative Office of the Courts compiled a series of briefs: "Sharing Information About Children in Foster Care" in 2010 following recommendations put forth by the Child Welfare Council (CWC) and California Blue Ribbon Commission on Children in Foster Care. As CWC co-chair and California

⁶ California Alliance of Child and Family Services v. Allenby (No. C 06-4095 MHP)

Supreme Court Associate Justice Carlos Moreno writes, "These briefs provide basic legal guidance about what information must be and may be shared and provides a starting point for discussions about how information can best be shared while still maintaining confidentiality." Another compelling issue in child welfare and foster care that is sure to invite future legislation and a continued conversation.

It is clear that the reforms of the past 10 years have vastly improved certain outcomes in California's child welfare system with emphases on family maintenance and reunification, permanency through relative guardianships and adoption incentives, and by focusing on the needs of foster youth to have greater educational stability. As California continues to struggle with budget deficits and human services programs are targeted, it must place an even greater emphasis on the needs of abused and neglected children. Provider reimbursement rates for foster family homes, foster family agencies, and other preferred residential placements have been cut in recent years on top of chronic underfunding; and the recruitment and retention of foster parents will continue to suffer as a result. Absent qualified residential placements for foster children, children may be placed out-of-county, where educational stability and access to mental health services, friends and family are even more difficult. And despite the success of AB 12, budget constraints have halted many more meaningful and needed policy reforms during the legislative process. Finally, the state must continue to work with its county and community partners to monitor any potential negative impacts of budget cuts to ensure the safety and wellbeing of abused and neglected children.

CHILD CARE

This Committee shares jurisdiction over child care issues with the Assembly Education Committee; although, much of the policy changes affecting this area have and continue to be carried out through the budget process. This Committee is responsible for the licensing of child day care facilities and Stage One Child Care.

Care is provided to children in families currently or previously receiving support through the California Work Opportunity and Responsibility to Kids Program (CalWORKs), the state's welfare-to-work program, as well as to other low-income working families subject to available resources. The state spends a total of \$3.1 billion on child care. Of that amount, \$1.4 billion are federal funds from the Temporary Assistance for Needy Families (TANF) and the Child Care and Development block grants. An estimated 200,000 eligible children go unserved and are on waiting lists because of a shortage of child care resources.

State administration

The state's child care system has a dual purpose: caring for children while their parents work and enhancing their developmental potential as they prepare for and attend school. Two state departments administer child care programs: the Department of Education (responsible for more than 2/3 of the funds) and the Department of Social Services (responsible for administering the first stage of child care for CalWORKs recipients).

Families are eligible for subsidized care when their incomes are lower than 75% of the State Median Income (SMI). For families whose incomes are above 44% of SMI, a graduated schedule of family fees applies, up to 8% of gross income.

Reimbursement rates

Rates to providers, paid through Alternative Payment Programs, are based upon a Regional Market Rate (RMR), up to the 85th percentile of cost of equivalent care based on surveys of private providers in every region. Child care centers contracting with the state Department of Education (CDE) are paid a single Standard Reimbursement Rate (SRR), adjusted for infants and toddlers, children with exceptional needs or disabilities, children at risk of abuse or neglect, and children with limited English proficiency.

CalWORKs child care

More than half of the total cost of subsidized child care is spent for current or former recipients of CalWORKs. Delivery of care for this population is provided through a three-stage process. Stages One and Two are statutory entitlements. In Stage One, CalWORKs applicants and recipients are provided care early in their welfare-to-work activities before their care situation

becomes stabilized. In Stage Two, current and former recipients are guaranteed care while they continue to participate and for two years after they leave aid. Stage Three care is not a statutory entitlement but has been provided since CalWORKs began, covering families after Stage Two until they no longer need care or exceed the general subsidized care income eligibility limits.

Subsidized child care

Child care for low-income families, whether they are recipients of CalWORKs or not, is provided by a variety of entities. Child care centers, which contract directly with CDE, must meet established educational and health and safety standards enforced by CDE (known as “Title V” programs). Licensed family day care must meet health and safety standards enforced by the Department of Social Services (DSS). There is also specialized care such as migrant care, and informal license-exempt care provided by relatives or for a single child. Alternative Payment Programs administer voucher payments, and Resource and Referral agencies help families find appropriate care, provide education for the community, and provide training and support for providers.

Final Budget Actions⁷:

- Cut \$256 million from CalWORKs Stage 3 child care, which serves working families who have successfully transitioned off CalWORKs cash assistance. This reduction will terminate Stage 3 child care for approximately 55,000 children effective November 1, 2010.
- Reduced funding of \$12.4 million to license-exempt provider reimbursement rates. Reduces the rate from 90% of the licensed provider limits to 80%.
- Reduced funding of \$83.1 million on a one-time basis by requiring contractors to utilize accumulated reserves to offset contract amounts.
- Reduced funding by \$17.1 million to reflect a reduction in the administrative and support services cost allowance for voucher-based contractors from 19% of the contract amount to 17.5%.
- Reduced funding for the California State Advisory Council on Early Childhood Education and Care by \$503,000. The Governor established the Council by executive order in November 2009 to help improve the state’s child care and early childhood education programs, including by identifying opportunities for coordination.

Legislative efforts

Many of the child care bills that were introduced by the Senate and Assembly developed out of concern for child daycare health and safety. In particular, the issue of childhood obesity has

⁷ The 2010 Budget Act.

<http://www.ebudget.ca.gov/pdf/Enacted/BudgetSummary/FullBudgetSummary.pdf>

taken center stage, not only here in California but across the nation and even at the White House. First Lady Michelle Obama and Governor Schwarzenegger have a shared interest in improving the health of overweight children. The goal, as set out in a report from the White House Task Force on Childhood Obesity, is to reduce childhood obesity from 20% to 5% by 2030.

California's Governor hosted his "[Governor's 2010 Summit on Health, Nutrition and Obesity: Actions for Healthy Living](#)." According to Schwarzenegger, "Obesity's a huge problem for the state of California and we have one out of three children being obese, two out of five adults being obese or overweight and I think those are staggering numbers."⁸ Childhood obesity costs California \$50 billion per year. As a result, **AB 627 (Brownley)** and **AB 2084 (Brownley)** sought to improve health outcomes of children by setting nutritional guidelines in day care settings since approximately 1.2 million children spend much of their week in the care of these providers. AB 2084 was signed by the Governor and will create minimum standards for beverages that are served in licensed child day care facilities such as requiring that safe drinking water is available and that only 1% or nonfat milk is served to children over two years of age.

In terms of child safety, gaps threatening the well-being of children were unfortunately discovered. It was discovered that a child was abused while in the care of a gymnasium child care center. Under current law, temporary day care offered in gyms and stores are a relatively new service, and unfortunately, state law has not caught up with ensuring that government oversight is ensuring child safety. **SB 702 (DeSaulnier)** and **AB 222 (Adams)** filled this legal gap by requiring that employees in these temporary day care settings obtain background clearances called "TrustLine."

AB 1368 (Adams) also improved children's safety in a day care setting by requiring that at least one person be present, at all times, who has 15 hours of health and safety training and a current course completion card in pediatric first aid and CPR.

⁸ KABC-TV/DT news article on February 24, 2010, <http://abclocal.go.com/kabc/story?section=news/state&id=7296404>

COMMUNITY CARE LICENSING

The Community Care Licensing Division (CCLD) of the Department of Social Services is responsible for the regulatory and licensing activities related to residential and non-residential programs. CCLD is charged with providing preventative and protective services to people in "community care facilities": 24-hour senior, adult, and child residential care homes as well as non-residential programs (e.g., child care centers and adult day programs). Health facilities—such as skilled nursing facilities, intermediate care facilities, congregate living health facilities, and adult day health centers—are licensed by the Department of Public Health. According to CCLD statistics, as of October 6, 2010 there were about 84,000 residential and non-residential programs licensed by CCLD, serving more than 1.4 million children and adults.

CCLD oversees the criminal background check and administrator certifications conducted to ensure the eligibility of community care providers and their employees. CCLD is responsible for ensuring that licensed homes meet all necessary fire safety requirements and obtaining health screening reports from physicians to verify that the applicant and personnel are capable of performing assigned tasks. In addition, CCLD reviews financial plans and conducts pre-licensing visits to ensure that the home is in compliance with laws and ready to begin operation. CCLD also oversees compliance and administers corrective action when a home fails to adequately protect the health and safety of its occupants.

In 2003, the visit protocol was changed by the Legislature to reflect actual visits as reported by CCL, ending the previous requirement that licensed homes be visited annually to one that required a random visit every five years. Given staffing limits, actual practice resulted in visits to only 10% of homes. The Legislature has added positions in subsequent years, and the Governor's 2007-08 budget proposed to increase the random visitation requirement to 30%. The Governor's 2008-09 budget, however, proposed to reduce the visitation requirement to 14% per year, requiring random visits once every seven years. That proposal was rejected.

Under state licensing law, local governments currently have some ability to control the location of residential care homes licensed for seven or more residents, since such facilities are subject to local use and zoning regulations. The law treats licensed homes for six or fewer residents as single family homes for zoning purposes, except for a 300-foot separation requirement that applies to many types of licensed housing. The 300-foot standard has been in place as part of the Community Care Facilities Act since 1978.

The state has an interest in assuring the adequate availability of housing serving the needs of children and adults who require residential care. Land use limitations are subject to scrutiny under the Fair Housing Act, 42 U.S.C. §3604, which prohibits discriminatory land use practices with respect to housing for people with disabilities (including seniors with disabilities) and children (familial status discrimination). The Act prohibits local governments from discriminating in housing on the basis of residents' familial status or disability. As more people with disabilities who have been or otherwise would be institutionalized in nursing facilities or state institutions move into the community, neighborhood opposition continues to be an obstacle in some instances. The Human Services Committee held an informational hearing in February

2009 addressing issues related to the siting of licensed homes for people with disabilities, including strategies for addressing so-called "Not in My Backyard" (NIMBY) barriers. The background paper prepared for that hearing (available on the Committee's website) includes an overview of the legal issues related to the siting of licensed homes for people with disabilities. *Working Together to Ensure Housing Opportunities for People with Disabilities and Children, Background Briefing Paper*, Assembly Committee on Human Services, (February 2009).

The future of community care licensed residential programs is a movement toward smaller, less institutional settings. New licensing categories are likely to emerge to meet the needs of the growing population of seniors and people with disabilities looking to be part of the community. One recent example is the new category of Adult Residential Facilities for People with Special Health Care Needs, or so-called SB 962 homes, which started as a pilot project to meet the specialized health care needs of people with developmental disabilities moving out of Agnews Developmental Center in small, home-like settings and has now been expanded to be available to people who will be moving from Lanterman Developmental Center. Based on the demonstrated success of the model, it will potentially be further expanded to be available to people with developmental disabilities throughout the state.

Some advocates have proposed that some program oversight functions of CCLD be shifted to agencies with more direct expertise and responsibility for providing services to people with disabilities. This might, for example, involve giving more responsibility for monitoring licensed residential and non-residential programs for people with developmental disabilities to the Department of Developmental Disabilities. Such proposals may both be more cost-effective and remove barriers to community living.

A number of bills heard by the Committee in the 2009-2010 Legislative Session related to residential facilities for seniors, including Residential Care Facilities for the Elderly (RCFEs) and Continuing Care Retirement Communities (CCRCs). **AB 407 (Beall & Eng)** and **AB 1433 (Eng & Beall)** established rights, requirements, and procedures in the event of, respectively, permanent closures of CCRCs and residential temporary relocations of CCRC residents. **AB 1169 (Ruskin)** specified financial disclosure requirements for CCRC contracts and providers' annual financial reports. **SB 781 (Leno)** specified additional information that must be provided to RCFE residents receiving eviction notices. **AB 123 (Portantino)** exempted from licensing homes covered by the low income tax credit and Section 8 subsidized housing when the home is occupied by elderly or disabled persons receiving supportive services if the services are not provided by the owner or operator of the home.

DEVELOPMENTAL DISABILITIES

With enactment of the Lanterman Developmental Disabilities Services Act (Lanterman Act; Welfare & Institutions Code § 4500 *et seq.*) the California Legislature established a comprehensive statutory scheme to provide services and supports to people with developmental disabilities.⁹ In its landmark opinion in *Association for Retarded Citizens-California v. Department of Developmental Services (ARC v. DDS)* (1985) 38 Cal.3d 384, 388, the California Supreme Court noted that "[t]he purpose of the [Lanterman Act] is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community ... and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community."

Direct responsibility for implementation of the Lanterman Act service system is allocated between the Department of Developmental Services (DDS) and 21 Regional Centers (RCs). RCs are private nonprofit entities established pursuant to the Lanterman Act that contract with DDS to carry out many of the state's responsibilities under the Act. See, e.g., Welf. & Inst. Code § 4620. RCs are to "assist persons with developmental disabilities and their families in securing those services and supports which maximize opportunities and choices in living, working, learning and recreating in the community." Welf. & Inst. Code § 4640.7(a). The main roles of RCs include intake and assessment, individualized program plan development, case management, and securing services through generic agencies (e.g., school districts, In-Home Supportive Services) or by purchasing services provided by vendors. RCs also share primary responsibility with local education agencies for provision of early intervention services under the California Early Intervention Services Act the Early Start Program. These services are funded through Part C of the federal Individuals with Disabilities Education Act, to promote a coordinated family service system for children from birth to 36 months who have a developmental delay or an established risk condition.

Approximately 40,000 vendored service providers deliver a wide range of services to more than 240,000 consumers,¹⁰ such as respite care, transportation, day treatment programs, residential placements, supported living services, work support programs, and various social and therapeutic activities.

Lanterman Act services are intended to meet the needs and choices of each person with

⁹ The term "developmental disability" means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. It includes mental retardation, cerebral palsy, epilepsy, and autism. It also includes disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but does not include other handicapping conditions that are solely physical in nature. Welf. & Inst. Code § 4512(a).

¹⁰ Diagnostic and demographic information about the population served by regional centers is available on DDS' website: <http://www.dds.cahwnet.gov/FactsStats/Home.cfm>.

developmental disabilities, regardless of age or degree of disability, and to promote his or her integration into the mainstream of the community. Welf. & Inst. Code § 4501. Such services must protect the personal liberty of the individual, be provided with the least restrictive conditions necessary to achieve the purposes of the treatment, services or supports, and enable the individual to approximate the pattern of everyday living available to people without disabilities of the same age. Welf. & Inst. Code §§ 4501, 4502(a)(b), 4750.

Under the Lanterman Act, each Californian with a developmental disability is legally *entitled* to “treatment and habilitation services and supports in the least restrictive environment.” § 4502. The California Supreme Court explained that this “entitlement” consists of a “basic right and a corresponding basic obligation: the right which it grants to the developmentally disabled person is to be provided with services that enable him to live a more independent and productive life in the community; the obligation which it imposes on the state is to provide such services.” *ARC v. DDS*, 38 Cal.3d at 391.

Services provided to people with developmental disabilities are determined through an individual planning process. E.g., Welf. & Inst. Code §§ 4418.3, 4512(j), 4646, 4646.5, 4647. Under this process, planning teams—which include, among others, the person with a developmental disability, referred to in the Act as “consumers” (Welf. & Inst. Code § 4512(d)), his or her legally authorized representative, and one or more regional center representatives—jointly prepare an Individual Program Plan (IPP) based on the consumer’s needs and choices.

The Lanterman Act requires that the IPP promote community integration. Welf. & Inst. Code § 4646(a). To this end, DDS and RCs must ensure that planning teams develop goals that maximize opportunities and teach skills needed for each person to develop relationships, be part of community life, increase control over his or her life and acquire increasingly positive roles in the community. Welf. & Inst. Code § 4646.5. The IPP must give the highest preference to those services and supports that allow minors to live with their families and adults to live as independently as possible in the community. E.g., Welf. & Inst. Code § 4648(a)(1), (2).

In addition to its role in monitoring RCs' compliance with state and federal law, DDS also operates four large state institutions, called developmental centers (DCs)¹¹ and one smaller state facility.¹² One large DC (Agnews DC, in San Jose) and one small state facility (Sierra Vista, in Yuba City) were closed in 2009. The four remaining DCs are licensed and federally certified as Nursing Facility (NF), Intermediate Care Facility/Developmentally Disabled (ICF/DD) and acute care hospitals. The one smaller state-operated facility is licensed as an ICF/DD. These facilities provide an array of services and supports for individuals who have been determined to be in need of a secure environment, or who have special medical and/or behavioral program needs. Approximately 2,000 of the individuals receiving services under the Lanterman Act (about 0.8%) reside in a DC.

¹¹ Fairview DC (Costa Mesa), Lanterman DC (Pomona), Porterville DC (Porterville), Sonoma DC (Eldridge).

¹² Canyon Springs (Cathedral City).

Budget Issues

Services for people with developmental disabilities are funded through a combination of federal and state funds.¹³ The 2010-11 budget for DDS and RCs is approximately \$4.8 billion, of which \$640 million (13%) funds the DCs, which serve 0.8% of the population.

Like all areas of state government, DDS and RCs have had to take steps to deal with the state's fiscal crisis. With limited exceptions, for example, most community provider rates have been frozen since FY 2003-04. The limited cost-of-living and other rate adjustments granted by the Legislature for residential and day programs in the past two decades have been far outstripped by inflation. The FY 2008-09 and FY 2009-10 budgets included an additional 3% reduction in provider rates. The FY 2010-11 budget continues the 3% reduction and includes an additional 1.25% reduction.

DDS and RCs have been required to institute numerous other cost-savings measures over the last 2 years. In FY 2008-09, in addition to various rate freezes and caps, these measures included, for example:

- Indefinitely restricting the use of purchase of service funds for starting new programs except extraordinary circumstances or to protect consumer health and safety.
- Requiring RCs to establish an internal review process of IPPs and individualized family service plans to ensure conformity with federal and state law and regulations.
- As part of this internal process, requiring RCs to consider a family's responsibility for providing similar services and supports for a minor child without disabilities in identifying a consumer's service and support needs as provided in the least restrictive and most appropriate setting as noted.

In FY 2009-10, cost-savings measures included suspending RC contract requirements specifying average service coordinator-to-consumer ratios, certain staff expertise requirements, and specified fiscal reporting requirements. In addition, DDS was directed to work with stakeholders to submit a plan to the Legislature that identified specific cost containment measures to achieve up to \$100 million in General Fund (GF) reductions for the 2009-2010 Fiscal Year. Then, due to a worsening economy, the Governor's May Budget Proposal required an additional \$234 million in reductions from DDS, which, unlike the first \$100 million, could come from the entire DDS budget, including DCs.

DDS adopted proposals to achieve a total of \$334 million in General Fund savings. These included \$78.8 million in savings through expanding federal funding to offset GF expenditures. Detailed information on the specifics of the adopted cost-savings measures is available on DDS' website: <http://www.dds.cahwnet.gov/Budget/Home.cfm>.

¹³ Approximately 90,000 consumers living in the community receive services funded through the federal Medicaid HCBS Waiver, which funds 50% of the costs of allowable services. The number of consumers who are funded through the HCBS Waiver is capped, but increases by 5,000 each year. In fiscal year 2009-10 the cap was 90,000, and will be 95,000 in federal fiscal year 2010-11.

In addition, the Governor vetoed an additional \$50 million from the DDS budget, specifically RCs Purchase of Services for services provided to children up to age 5, which he proposed be offset with funding from the California Children and Families Commission. Finally, as noted, the FY 2010-11 budget continues the 3% reduction in provider rates and RC operations and includes an additional 1.25% reduction.

Monitoring the impact of the budget actions on consumers and family members will be an ongoing focus of the Human Services Committee's activities in the upcoming session. It will be important to determine the cumulative impact of rate cuts and freezes, caps and suspensions of services, increases in RC caseloads, etc. on the ability of the state to continue to meet the needs of all persons with developmental disabilities by providing quality services and supports in the least restrictive settings.

While the budget was the primary focus of activity concerning the developmental disabilities service system over the 2009-2010 Legislative Session, there were significant policy issues addressed, including the following:

Regional Center Oversight

In addition to the development of cost-savings measures through the budget process, the state's fiscal crisis has also brought attention to RC fiscal and management practices and DDS' general oversight of RCs. Oversight was the subject of hearings by the Assembly Committee on Accountability and Administrative Review and, in response to a request from the Joint Legislative Audit Committee, a review of RC fiscal policies and practices, and DDS' oversight of RCs conducted by the Bureau of State Audits (BSA).¹⁴ The Human Services Committee conducted a joint oversight hearing (with the Senate Human Services Committee) in November 2010 on the BSA audit and DDS oversight of RCs, generally.¹⁵ Issues, such as the following, were raised at the hearing and will likely be the subject of ongoing policy discussions:

- Whether DDS is sufficiently monitoring RCs to ensure their compliance not only with respect to required fiscal policies and practices but also with respect to the law related to the development and implementation of IPPs consistent with consumer choice and the provision of services in least restrictive settings.
- Whether DDS has sufficient authority under the Lanterman Act to ensure that RCs are complying with their obligations to consumers as set forth in the Lanterman Act and federal law, and are doing so in a cost-effective manner.

¹⁴ In August 2010, BSA issued a report of its review entitled, *Department of Developmental Services: A more uniform and transparent procurement and rate-setting process would improve the cost-effectiveness of regional centers*, California State Auditor, Bureau of State Audits, Report: 2009-118 (August 2010).

¹⁵ A Background Briefing Paper prepared for the hearing is available on the Committee's website (under Joint Hearings).

- Whether there are ways to increase DDS' ability to monitor RCs' fiscal and other policies and practices that will not impinge on the integrity of the IPP process.
- Whether RC fiscal practices—particularly with respect to rate-setting and provider selection—are sufficiently transparent to ensure accountability and cost-effectiveness in their use of public funds.
- Whether the right balance has been struck between allowing flexibility in the operation of RCs, on the one hand, and establishing statewide standards and guidelines for RC fiscal practices and the IPP process, on the other hand.
- Whether there is adequate communication—including training and information sharing—between DDS and RCs, among RCs, and between RC management and employees—on efficient and cost-effective practices and procedures related to such matters as rate-setting, provider selection, resource development, the IPP process, and employer-employee relations.
- Whether policies and procedures are in place to ensure that RC employees are adequately protected against retaliation when raising issues concerning improper or inefficient RC policies and practices.

Deinstitutionalization

Deinstitutionalization/*Olmstead* implementation was another focus of activity over the 2009-2010 Legislative Session. The population of people with developmental disabilities in state-operated institutions has continued to decline. DDS and RC efforts to downsize large facilities so they become eligible for federal funds continued. Two state facilities were closed during the Session: Agnews DC, in San Jose, and Sierra Vista, in Yuba City. The plan to close Agnews DC was approved as part of the Governor's 2005-2006 Budget. The last Agnews DC residents moved out in March 2009. Under the plan, approximately 85% of Agnews' residents were expected to move to the community, with the rest likely moving to another DC. In fact, through the IPP process, it was determined that almost all former Agnews residents could move to community living arrangements. Between July 1, 2004 and March 27, 2009, a total of 327 Agnews residents transitioned to living arrangements in the community (including five who returned to their family homes); and 20 residents transferred to other DCs. Thirty percent of those who transitioned to the community lived at Agnews for 31-40 years, 56% had significant health and extensive personal care needs, and 39% required significant behavioral support.

This has clear implications for the residents of other DCs, all of which (with the possible exception of the secure treatment program at Porterville DC) serve populations similar to Agnews. While those remaining in DCs, generally, have more severe disabilities and more complex needs than most consumers living in the community, there are many individuals currently living safely and successfully in the community, including the former residents of Agnews, with equally severe disabilities and complex needs. This is strong support for the conclusion drawn 26 years ago in an Assembly Office of Research report¹⁶—that the primary obstacle preventing most remaining DC residents from moving to the community is not their

¹⁶ *Keeping the Promise of the Lanterman Act: Report 1: Quality Services for People with Developmental Disabilities*, Assembly Office of Research (April 1984).

disabilities or needs, but the availability of resources to meet those needs and the commitment to ensuring that those resources are developed and provided.¹⁷

On April 1, 2010, DDS submitted to the Legislature a Plan for the Closure of Lanterman DC. The Plan was approved as part of the 2010-2011 Budget. In the Plan, DDS notes:

The Plan builds on several innovative strategies which contributed to the closure of Agnews in 2009. These strategies were developed to provide community opportunities to meet the specific needs of the Agnews residents and enable them to remain near their families. The Agnews closure included the establishment of new residential service options, including a licensure category for facilities to serve individuals with enduring medical needs; the enhancement of the community health care system to provide access to needed services; and a program for state employees to continue working with former residents in community settings. These new community services and supports provided meaningful choices and reliable services to consumers who transitioned from Agnews. This Plan incorporates those key service improvements.

2010-2011 Budget trailer bill language included a number of provisions related to the Plan, including authorizing a program to enable state employees to continue working with former Lanterman DC residents in the community.

No closure date is specified for Lanterman DC; however, the Plan provides that "Residents will not move from Lanterman until appropriate services and supports identified in the individual plan are available either in the community or at another DC."

Individual Budgets

Among the budget savings measures discussed above, is development of an Individual Choice Budget model. **AB 94X (Evans)**, Chapter 9, Statutes of 2009 Fourth Extraordinary Session, added Section 4648.6 to the Welfare and Institutions Code requiring DDS, in consultation with stakeholders, to develop an alternative service delivery model that provides an Individual Choice Budget for obtaining quality services and supports which provides choice and flexibility within a finite budget that in the aggregate reduces regional center purchase of service expenditures, reduces reliance on the state general fund, and maximizes federal financial participation. The individual budget will be determined using a fair, equitable, transparent standardized process.

Progress on development of the Individual Choice Budget has been slow, in large part related to issues about how such a model can be implemented without the loss of federal funds. Concerns have been expressed that many providers of "temporarily" suspended services, which are

¹⁷ The Human Services Committee held a joint oversight hearing (with the Select Committee on Disabilities) on April 27, 2010 on the Final Report on the Closure of Agnews Developmental Center. A Background Briefing Paper for the hearing is available on the Committee's website (under Joint Hearings).

intended to be available when the model is implemented in a manner that will achieve sufficient cost savings, will not survive a prolonged period when such services are not funded.

Whether through the Individual Choice Budget model or through implementation of a Self-Directed Services Waiver,¹⁸ it is likely that some mechanism by which eligible individuals will become more empowered to gain control over the selection of services and supports that meet their needs will be among the system reforms receiving continued attention in the next legislative session.

Employment First Policy

A May 2007 Report to the Legislature and the Governor, prepared by the State Council on Developmental Disabilities pursuant to SB 1270 (Chesbro), Chapter 397, Statutes of 2006, included recommendations for improvements to the transition services planning process for students and recommended policies and initiatives to expand employment opportunities for people with developmental disabilities.¹⁹ In 2009, the Legislature enacted **AB 287 (Beall)**, Chapter 231, Statutes of 2009, to continue efforts to expand employment opportunities—particularly integrated employment—for people with developmental disabilities. As noted in AB 287's legislative findings, research demonstrates that wages and hours worked increase dramatically as individuals move from facility-based to integrated employment, and suggests that other benefits include expanded social relationships, heightened self-determination, and more typical job acquisition and job roles.

AB 287 requires the State Council on Developmental Disabilities to form a standing Employment First Committee to, among other things, develop an Employment First Policy, the intended outcome of which is a significant increase in the number of individuals with developmental disabilities who engage in integrated employment, self-employment, and microenterprises, and in the number of individuals who earn wages at or above minimum wage. The first annual report of the Employment First Committee, which is to include the proposed Employment First Policy and other recommended legislative, regulatory, and policy changes, is due on July 11, 2011. Legislation to adopt and begin implementation of the state's new Employment First Policy will likely be introduced during the next session.

Housing

A byproduct of the trend toward deinstitutionalization and downsizing of large licensed facilities has been the development of models for increasing the permanent supply of affordable housing for people with developmental disabilities. As more people with developmental disabilities, including those with significant and complex needs, move to the community, the demand for

¹⁸ DDS is reportedly continuing discussions with the federal Centers for Medicare and Medicaid Services in developing this new service option.

¹⁹ *SB 1270 Report on Expanding Opportunities and Choice in California's Day Program Services for Individuals with Developmental Disabilities* (May 2007.)

innovative and affordable housing options continues to rise. One response to this increasing housing demand was AB 2100 (Steinberg), Statutes of 2004, Chapter 831. AB 2100 was enacted in anticipation of the plan to close Agnews DC. It authorized the three Bay Area RCs that would be participating in the Agnews closure process to, with DDS approval, provide for, secure, and ensure payment of lease agreements for housing for people with developmental disabilities.

Housing models involving development of a permanent stock of affordable and accessible housing for people with developmental disabilities are likely to become more common. A DDS report to the Legislature released on April 4, 2008, called "Controlling Regional Center Costs," supports the cost-effectiveness of the AB 2100 model. DDS points out that "rates for licensed residential facilities include mortgage, lease, and/or rent costs. . . . Because the housing is privately owned by a service provider, the public tax dollar investment is never recouped by the state. The property is 'bought' repeatedly through the rate paid to the service provider." The Report concludes that an alternative "is for the state to change the current financing structure of community housing for individuals with developmental disabilities to a 'buy-it-once' strategy that will generate long-term savings." The other advantage of the model, noted in the Report, is that consumers do not have to move if the provider is changed.

The 2010-2011 Budget trailer bill expanded the availability of residential facilities to provide special health care and intensive support services to adults in homelike settings—Adult Residential Facilities for Persons with Special Health Care Needs (ARFPSHN, or SB 962 Homes)—from a pilot program limited to former residents of Agnews DC to make such homes available to residents of Lanterman DC. An issue for the near future is whether, in light of the success of the pilot, the SB 962 model should be available to consumers statewide, as had initially been proposed.²⁰

Other Bills

The Committee heard several other significant bills affecting people with developmental disabilities. Among those was **AB 140 (Beall)**, which establishes a dispute resolution process that applies to inter-agency disputes between an RC and a generic agency, such as a local education agency. **AB 1589 (Committee on Accountability and Administrative Review)** was not enacted but would have required RCs to disclose information on "related persons transactions" and established whistleblower protections for RC employees who report improper RC activity. **SB 110 (Liu)** expands the scope of provisions related to elders who are victims of crimes, abuse, or neglect to include people with developmental disabilities and other non-elder

²⁰ An independent evaluation of the SB 962 Pilot Project was conducted by the Center for Human Services, UC Davis Extension, University of California. The Final Report of the evaluation, released in the summer of 2010, was highly favorable, concluding that "consumers are receiving high quality care and have good access to health care in their homes and in the community. Moreover, the SB 962 model appears to be cost-effective and to have contributed in meaningful ways to consumers' health, quality of life, level of functioning and overall happiness." *Evaluation of Senate Bill 962 Pilot Project—Final Report*, Center for Human Services, University of California, Davis, Extension (June 2010), p. vii.

dependent adults, including provisions related to law enforcement training and county interagency death review teams. Two resolutions were heard and passed by the Legislature impacting people with disabilities, including people with developmental disabilities: **ACR 162 (Beall)**, designates the second week of each October as Disability History Week. **SJR 31 (Pavley)** urges the President and Congress to immediately enact the Achieving a Better Life Experience Act of 2009 (ABLE Act), creating tax-exempt accounts for individuals with disabilities.

FOOD ASSISTANCE

Today, nearly 40 million Americans—almost 13% of the population—are receiving Supplemental Nutritional Assistance Program (SNAP) benefits (formerly known as Food Stamps), a new record for the nation's premier anti-hunger program. In California, almost three million persons are receiving CalFresh (California's new name for the Food Stamp Program), up from two million in 2007. Food banks in the state are also experiencing steep increases in the number of clients they serve. Since the advent of the economic crisis in December 2007, they have seen an increase of 30 to 50%.

SNAP is the nation's number one anti-hunger program for the poor. The benefits, entirely funded by the federal government, are made available for food purchase monthly through an ATM-like debit card. To qualify, a person's income must meet both net and gross income tests, and resources, such as cash on hand, cannot exceed \$2,000, or \$3,000 for disabled and elderly people, when a child lives in the home. The federal, state, and county governments share in the cost of administration (50/35/15), contributing \$412 million, \$310 million, and \$99 million, respectively, in 2009-2010²¹. SNAP, or CalFresh, is administered locally by county welfare departments.

California has added its own state laws, such as the finger-imaging requirement, where all adult household members are required to submit a fingerprint before benefits are disbursed. On average, an individual receives \$150 and a household receives \$350 in benefits per month.

There are two basic populations served by SNAP—assistance and non-assistance (NAFS). The assistance component serves families in which all members also receive income assistance, principally from a CalWORKs grant. More than 99% of assistance households contain children. The non-assistance component consists of households where at least one eligible member does not receive income assistance. Within the non-assistance population, "able-bodied adults without dependents" (ABAWDs) are generally limited to receive food stamps for only three months in a 36-month period unless they qualify for an employment or county-sponsored waiver. However, the American Recovery and Reinvestment Act of 2009 eliminated this time limit restriction until September 30, 2010.

According to United States Department of Agriculture participation rate data, only about half of eligible Californians actually receive SNAP benefits. Advocates for the poor assert that this is largely explained by systematic barriers such as: 1) welfare department office hours not being accessible for working families, 2) burdensome application processes imposed by California such as the fingerprint imaging requirement and the intake face-to-face interviews for assistance clients; and 3) reporting and verification requirements that families must comply with to continue their benefits. A recent federal waiver allows California to waive this in-person interview requirement for non-assistance clients and for the interview, instead, to be conducted over the phone.

²¹ CDSS Local Assistance Binder Estimates, May Revise 2010, page 6, line 417

Lost Revenues to Communities

When CalFresh benefits are spent at grocery stores, not only families and individuals benefit—the economy as a whole benefits. According to Moody's Investor Services, Food Stamps have the highest economic multiplier effect out of all government programs or fiscal policy tools that stimulate the economy.

The national SNAP participation rate is 67%. Because only 50% of Californians who are *eligible* are receiving assistance, the state is bypassing billions of dollars in federal benefits and the resulting economic activity. Indeed, California is second to last in the nation in USDA's biennial report on SNAP participation. The economic effect of this low participation rate is very significant to California's economy. The California Food Policy Advocates estimates that California leaves \$3.7 billion in federal funds on the table.²² As mentioned above, not only are California families not receiving much needed food assistance, but the economic "multiplier effect" of these dollars on businesses and local and state coffers is quite impressive. Moody's finds that for every food stamp dollar spent, a \$1.73 is generated in economic activity. The USDA finds this amount to be eleven cents higher at \$1.84. Businesses where these federal benefits would be spent—grocery stores, farmer's markets, and other retailers—are missing out on much needed revenues. These dollars would sustain and potentially create new jobs in retail stores, trigger farmers to produce more, and allow truckers to transport these additional goods. For county and state General Funds, the benefits would free up a family's discretionary income and would, in effect, direct these dollars to taxable purchases, creating sales tax revenue, which is split between the state and counties.

The California Food Assistance Program (CFAP) provides state-funded food stamps to legal immigrants ineligible for federal food stamps because of their immigration status. It is entirely funded by the state General Fund, costing a total of \$36.6 million in 2009-10. According to the Department of Social Services²³ the projected number of CFAP participants in 2010-11 will be almost 40,000.

Final Budget Actions

Relative to other human services programs, the food assistance budget went largely unchanged. This is mostly a function of the federal government funding all of the benefits and 50% of the administrative cost of the program. However, the state does provide General Fund dollars for its 35% share of the administrative cost of the benefits (\$310 million in 2009-10).²⁴ The 2010-2011 Budget:

- Allocates \$30 million in one-time federal dollars to absorb increased CalFresh administrative costs in the NAFS caseload. This appropriation was controversial since

²² <http://cfpa.net/ldcp/ldcp2009.pdf>

²³ CDSS Local Assistance Binder Estimates, May Revise 2010, page 241

²⁴ Ibid, page 6, line 417

USDA was encouraging California to use these one-time funds to make program improvements, including moving CalFresh from quarterly to semi-annual reporting.

- Implements an Inter-County Transfer process so that CalFresh participants do not have to reapply for benefits when moving one county to another.

Legislative changes

Several measures were introduced in the 2009-2010 Legislative Session that would have made participation less difficult by removing barriers.

One of the primary barriers to CalFresh (and CalWORKs) is the burdensome reporting requirement. **AB 1642 (Beall)** (see CalWORKs, above) would have made a significant difference in the lives of the participants of CalFresh, the work of the county eligibility workers, and the effect on California's economy. This bill would have made California the last state to convert its CalWORKs and CalFresh programs to "semi-annual reporting" (SAR) which would have allowed these program participants to submit their income reports only twice per year instead of four times. The reduction in paperwork would have saved counties precious labor time, kept participants from falling off the program because of confusing and burdensome paperwork requirements, and injected additional CalFresh dollars into the state which would trigger a multiplier effect, as discussed earlier.

Since the Statewide Fingerprint Imaging System's (SFIS) birth in 2000, several bills and budget proposals have been introduced to eliminate, what many food assistance advocates believe to be a barrier to assistance. All have failed. SFIS is the state's system to "deter" an applicant's attempt to obtain duplicate aid in more than one county by taking an applicant's fingerprint, photograph and personal descriptor information. California and four other states are the only ones that operate such a system and the federal government does not require it.

The California State Auditor estimates that it has cost the state \$31 million to develop the system, and \$5 million annually to maintain it (not including county administration time).²⁵ DSS estimates that SFIS deters approximately \$68.7 million²⁶ in duplicate aid annually but cannot empirically prove that amount because the extent of duplicate aid fraud was not determined before implementation of SFIS. **AB 1057 (Beall)** would have implemented SAR as well, as discussed above, but also would have eliminated SFIS and instead created a different verification system by using the already existing Department of Motor Vehicles identifiers.

AB 719 (Lowenthal) successfully obtained "transitional" CalFresh benefits for foster youth who are exiting foster care. Twelve months of food assistance will be available to these young adults to help them transition into adulthood while minimizing the paperwork requirements.

²⁵ California State Auditor, Department of Social Services: For the CalWORKs and Food Stamp Programs, It Lacks Assessments of Cost-Effectiveness and Misses Opportunities to Improve Antifraud Efforts, November 2009, Report 2009-01, page 10.

²⁶ CDSS document entitled, "Annual Cost of Operating the Statewide Fingerprint Imaging System (SFIS) October 16, 2008.

California renamed its Food Stamp Program, "CalFresh," in 2010. AB 433 (Beall), Chapter 625, Statutes of 2008, required that DSS and advocacy groups rename California's Food Stamp Program. California was prompted to make a change by federal and state law. In 2008, Congress passed the Farm Bill (Public Law 110-246) which included a provision that renamed the Food Stamp Program the "Supplemental Nutrition Assistance Program" (also known as SNAP). States could use this federal name or chose another. California, like many other states, chose to explore other naming options. In 2008, the California legislature passed Assembly Member Beall's AB 433, which required the development of a name for California that reflected several facts; "stamps" no longer exist, the program can support healthy living, the program has benefits to California agriculture, and that food stamps is a health a nutrition program. In 2009, the state and stakeholders went through a process to explore naming options, including consideration of the name SNAP. This process included key informant interviews, focus group testing, and broader surveying on the various options. As a result, in 2010, California has a new name—*CalFresh – better food for better living*.

IN-HOME SUPPORTIVE SERVICES

The In-Home Supportive Services (IHSS) program serves more than 460,000 eligible individuals who are aged, blind, or have disabilities. The broad goal of the program is to provide care to people in their own homes in order to avoid placement in institutions such as Skilled Nursing Facilities, Residential Care Facilities, and other congregate care settings.

The program provides: (1) Domestic services such as housework, shopping for groceries and meal preparation; (2) Non-Medical Personal Care services such as toileting, dressing, transportation; (3) Paramedical services such as giving medications and changing a colostomy bag; and (4) Protective supervision for those who, due to cognitive decline or dementia, cannot be left alone for extended periods.

The IHSS program is supervised at the state level by the state Department of Social Services (DSS), and administered at the local level by counties, who perform eligibility determinations and assess the number of hours a client needs (up to a maximum of 283 hours per month). Each county is required to establish an employer of record for the purposes of collective bargaining, background checks on care providers, and other workforce development activities.

IHSS is available to those who are aged (65 and over), blind or disabled, living in their own homes (or are capable of doing so if IHSS services are provided), with income low enough to qualify for Supplemental Security Income/State Supplementary Program (SSI/SSP) benefits.

IHSS is funded with a mix of federal, state, and county funds. There are three program components: (1) the Medi-Cal Personal Care Services Program (PCSP); (2) the IHSS Plus Waiver Program; and (3) the IHSS Residual Program. Half of the costs of the PCSP and IHSS Waiver Plus programs are borne by the federal government, and the remainder is shared by the state (65%) and counties (35%). The Residual Program is entirely state and county-funded. Since the IHSS Plus Waiver Program was approved by the federal government in 2004, the Residual Program has become a small part of total IHSS, representing about 7% of total caseload.

PCSP is part of the federal Medicaid program (known in California as Medi-Cal), which partners with states to provide health insurance to the eligible poor. PCSP provides personal care tasks to Medi-Cal patients who, due to a medical condition, cannot perform such tasks on their own. PCSP also provides, secondarily, essential housekeeping and home management services. PCSP clients are entitled to 3.5 hours per day or 60 hours per month of services and must require assistance with at least two unmet needs of daily living in order to qualify.

The IHSS Plus Waiver Program, established in July 2004, expanded PCSP to cover certain previously ineligible services and providers. Previously, protective supervision was not covered and parents and spouses did not qualify as providers eligible for reimbursement. The IHSS Plus Waiver Program expanded federally funded coverage for these services and providers.

The IHSS Residual Program is a state-only program available to individuals who are eligible for IHSS but not federally funded Medi-Cal. The IHSS Plus Waiver Program expanded federal eligibility to many previously uncovered patients, greatly reducing the role of the Residual Program. Today, most Residual Program recipients are ineligible for federally funded IHSS programs due to immigration status.

Counties deliver services in one of three service delivery modes, or by a combination of different modes. The vast majority of IHSS clients receive care services from an individual provider (IP). A client interviews, hires, and fires a caregiver who is not an employee of the client, but serves as an independent contractor. This mode offers maximum autonomy to the consumer and relieves him or her from employer tasks such as withholding taxes and providing worker's compensation insurance. Some counties provide IHSS services through a contract with a home care agency. Such an agency employs and supervises caregivers who provide care to clients in their home. Clients have less autonomy in the selection of a caregiver in this mode of service delivery. Some counties employ their own care providers to deliver services to clients. Since they are county employees, the county is responsible for their work.

Counties must establish an employer of record for the purposes of collective bargaining. Nearly all of California's counties choose to meet this requirement through the establishment of a Public Authority. Public Authorities maintain registries of IPs, conduct background checks, and negotiate with labor unions for wages and benefits. Five counties choose to serve as their own employer of record and negotiate directly with labor unions.

Since 2000, the state has contributed its regular 65% share of non-federal dollars to increasing wages for IHSS workers, up to a designated cap, depending upon increases in state revenue. Currently, the state participates in wages of \$11.50 per hour plus 60 cents for health benefits, for a total of \$12.10 per hour. The 2009-10 Budget Act enacted in February 2009 reduced this amount to \$9.50 plus 60 cents for health benefits, for a total of \$10.10. However, the reduction was enjoined in *Dominguez et al. v. Schwarzenegger et al.* (DC ND Cal.), and is on appeal in the Ninth Circuit.

Budget Issues

Most of the legislative actions concerning the IHSS program over the 2009-2010 Legislative Session have been taken through the budget process, without being vetted through policy committees, even in instances where the budget actions effected significant policy changes.

2009-2010 Budget²⁷

²⁷ Portions of this section are excerpted from the Background Paper prepared for the Assembly Budget Committee and Senate Budget Subcommittee No. 3 Oversight Hearing on Implementation of Recent Changes in the IHSS Program, 10/28/09, available at <http://www.assembly.ca.gov/acs/subcommittee.asp?subcommittee=1>.

Budget-related legislation enacted in July 2009 for the 2009-10 budget year contained significant changes in the IHSS program, including service reductions and eliminations, the expansion of quality assurance and anti-fraud activities, the elimination of share-of-cost buyouts that previously lowered some recipients' out-of-pocket expenses, a reduction to the support of Public Authorities, and the receipt of federal stimulus funding.

In his 2009-2010 Budget, Governor Schwarzenegger proposed to eliminate IHSS services for nearly 90% of the caseload of recipients, or for all recipients with a functional index score (FI) of less than 4.0, for total General Fund (GF) savings of roughly \$700 million. The FI score is intended to be a standardized measure for overall need for assistance on a daily basis. Instead, the Legislature adopted, effective September, 2009: (1) restrictions in eligibility for domestic and related services, eliminating these services for 90,000 consumers, and; (2) the elimination of all services for a group of nearly 37,000 IHSS recipients with FI scores under 2.0.

These changes were initially estimated to save about \$73 million in 2009-10. For both of these reductions, the Legislature also adopted exemptions to protect recipients who receive paramedical services, protective supervision, or a total of more than 120 hours of services per month. The Legislature additionally authorized the DSS Director to waive these exemptions if they placed the program's federal funding at risk. The exemption for recipients receiving more than 120 hours of services was subsequently waived by the DSS.

In 2004, comprehensive legislation (**SB 1104 (Committee on Budget & Fiscal Review)**, Chapter 224, Statutes of 2004) was enacted to standardize assessment of IHSS recipients' needs and to ensure integrity in the IHSS program. Among its other requirements, SB 1104 directed DSS and the Department of Health Care Services (DHCS) to develop a new provider enrollment form that each person seeking to provide supportive services must complete, sign under penalty of perjury, and submit to the county. SB 1104 also gave DHCS authority to investigate suspected instances of fraud in the IHSS program. The bill required DSS, DHCS, and county quality assurance staff to work together and coordinate activities.

In July, 2009, **AB X4 1 (Evans)**, Chapter 1 of the 2009-10 Fourth Extraordinary Session, allocated additional 2009-10 and 2010-11 funds to DHCS and DSS for a total of 25 new fraud investigation and program integrity-related positions. AB X4 1 additionally included \$10 million in additional funds to be allocated to counties based on their approved plans. **AB X4 4 (Evans)**, Chapter 4 of the 2009-10 Fourth Extraordinary Session, the human services trailer bill, also included language changes to provisions governing the new provider enrollment form, requiring documentation to be submitted in person by applicant providers to county offices.

At the same time, **AB X4 19 (Evans)**, Chapter 17, Statutes of 2009 Fourth Extraordinary Session, was enacted to enhance program integrity and anti-fraud protections in the IHSS program. The 2009-10 Budget included the Administration's estimate of about \$162 million GF savings as a result of new anti-fraud activities in the IHSS program. Among other things, AB X4 19 required the following:

- Criminal background checks to be completed for all prospective providers as of October 1, 2009 and to be completed by July 1, 2010 for anyone who is already a provider on October 1, 2009.
- Effective November 1, 2009, all prospective providers are to complete an orientation at the time of their enrollment as a provider. Between November 1, 2009 and June 30, 2010, all current providers are to receive the orientation information.
- Unannounced visits to a recipient's home in targeted cases where there is cause for concern regarding program integrity. DSS is required to develop protocols for follow-up home visits and other actions if the provider and recipient are not present. Allows the provider and recipient the opportunity to address any suspicion of fraud that has resulted in a home visit.
- Timesheets are to include: (1) certification by the provider and recipient verifying that information is true and correct, and; (2) a statement that providers and recipients may be subject to criminal penalties if not. Effective July 1, 2011, requires the index fingerprint of providers and recipients be included on timesheets.
- Fingerprinting for new consumers will occur in the home at initial assessment as of April 1, 2010. For current consumers, effective April 1, 2010, the recipient will be fingerprinted at the next reassessment, also in the home, with exemptions for minors and those physically unable to provide fingerprints due to amputation.

There have been legal challenges to a number of the program changes pertaining to the IHSS program.²⁸ These include *Oster v. Wagner* (DC ND Cal.), challenging elimination of all IHSS services to some 40,000 recipients based on "Functional Index Scores," and loss of domestic and related services to more than 90,000 thousand additional recipients based on "Functional Ranks." On October 23, 2009, the court issued a preliminary injunction preventing implementation of these cuts. The state has appealed. Another lawsuit, *Beckwith v. Wagner* (Alameda County Superior Court), challenges the exclusion of anyone convicted of a felony at any time from serving as an IHSS provider. The state's policy was enjoined in February 2010, and an appeal is pending.

2010-11 Budget

The total 2009-10 budget for the IHSS program was approximately \$5.5 billion (\$1.2 billion General Fund). The 2010-11 budget includes \$300 million in savings and cuts to the IHSS program through the following: (1) Using IHSS provider-generated revenue to draw down additional federal funds and offset General Fund expenditures in the program (\$190 million); (2) imposing a 3.6% across-the-board reduction to the hours assessed for IHSS recipients (\$35 million); and, (3) reflecting an updated caseload estimate based on an actual decline in recipients as compared to the previous caseload projection (\$75 million).

In addition, the human services budget trailer bill, **AB 1612**, Chapter 725, Statutes of 2010, included the following programmatic changes and provisions:

²⁸ The status of these cases is, of course, subject to change.

- The cuts in services based on FI scores and Functional Ranks, which were enacted as part of the 2009-10 budget but suspended due to pending litigation, are statutorily suspended until July 1, 2012. The limit on state participation in IHSS wages to \$9.50 per hour and benefits to \$0.60 per hour is also suspended until July 1, 2012. These cuts will take effect then only if a court issues an order allowing them to proceed that is not subject to appeal or for which the time to appeal has expired.
- The list of crimes for which a conviction would bar an individual from being an IHSS provider was expanded to include all serious or violent felonies (as described in §§ 667.5(c) and 1192.7 of the Penal Code), felony offenses for which a person is required to register as a sex offender (pursuant to Penal Code § 290), and felony fraud in excess of \$950 in any public sector program, if the conviction occurred within the last 10 years. However, for these expanded crimes, a recipient may request an individual waiver from the ban for a specific provider. The county will be required to notify recipients if their intended provider has been convicted of any of the crimes on the expanded list and provide a waiver form, which if signed by the recipient, would re-lease the county from any liability.

In addition, an individual seeking to become a provider will be able to request a general exemption from DSS from the expanded list, which would enable the individual to provide services to any recipient wanting to hire that individual. DSS will be required to consider specified factors related to the individual's rehabilitation in granting or denying the request for the general exemption. If DSS denies the request, then the individual may appeal in a fair hearing.

Providers who have already completed the provider enrollment process or have begun the process and have their enrollment pending are not subject to the expanded list of excluded crimes; although, providers who have been denied enrollment based on a criminal background check and are currently appealing the denial are subject to the expanded list of crimes. These provisions take effect 90 days after the budget was enacted.²⁹

- IHSS providers working in more than one county will now be able to obtain multi-county background check clearances. A provider will now only have to obtain a background check in one county in which the provider works that, if clear, will enable that provider to work in other counties. Counties (or nonprofit consortia or public authorities) will need verify through CMIPS whether a potential provider has already been cleared by another county (or nonprofit consortium or public authority). The process around notification of subsequent arrests is not addressed. These new provisions took effect upon enactment of the budget.
- The budget agreement maintained requirements for fingerprinting IHSS recipients.

²⁹ Under federal law, no exceptions or expungements are permitted with respect to the prior list of disqualifying crimes, under Welfare and Institutions Code § 12305.81(a): 1) fraud against a government health care or supportive services program; 2) a violation of subdivision (a) of Penal Code § 273a (specified abuse of a child); or 3) a violation of Penal Code § 368 (abuse of an elder or dependent adult).

In 1999, the United States Supreme Court, in *Olmstead v. L.C.* (1999) 527 U.S. 581, held that, under the federal Americans with Disabilities Act (ADA), unnecessary institutionalization is a form of discrimination based on disability. The IHSS program is a critical component of California's efforts to comply with the "integration mandate" of the ADA.

The IHSS program is the fastest growing major social program in California. According to the Legislative Analyst's Office (LAO), between 1998-99 and 2008-09, IHSS General Fund expenditures grew at an average annual rate of about 13%. Increased costs are due to a combination of increases in provider wages, significant growth in the caseload, and an increase in the average number of authorized hours per case. These changes reflect both the increasing population in the State of seniors and people with disabilities, and the success of the IHSS program in enabling even people with significant disabilities to remain in their homes as an alternative to far more costly institutionalization.

In a January 2010 report, entitled *Considering the State Costs and Benefits: In-Home Supportive Services Program*, the LAO considered the net fiscal impact of eliminating the IHSS program and concluded that elimination of the program would result in a net cost to the state General Fund if more than 32% of recipients entered a skilled nursing facility as a result. A subsequently conducted analysis suggests that the breakeven point may be even lower, resulting in net costs to the state if only 22% of IHSS recipients moved to nursing homes in the absence of IHSS services. Howes, C., *Costs and Benefits of In-Home Supportive Services for the Elderly and Persons with Disabilities: a California Case Study*, Institute for Women's Policy Research and PHI (May 3, 2010), <http://www.iwpr.org/pdf/E512HowesCBA.pdf>. Moreover, the LAO's analysis did not address the human costs of eliminating or drastically cutting the IHSS program on recipients' quality of life, regardless of the percentage who would be institutionalized as a result.

The growth—that is, the success—of the IHSS program has led to budget actions and budget proposals, including those discussed above, to control costs by cutting provider wages, limiting access to services within the program, narrowing eligibility for the program, and even elimination of the entire program. Proposals to control costs, improve program efficiency, and minimize waste and fraud in the IHSS program will likely be offered in the coming legislative sessions, as is appropriate. It would also be appropriate, however, if those proposals that entail substantial policy changes are effected through bills that are reviewed by the appropriate policy committees. Among other things, policy committee review provides an opportunity for input from experts and other stakeholders that will minimize enactment of legislation that will inevitably result in costly litigation.

It is also important that anti-fraud and program integrity measures be shown to be cost-effective. There is no solid data on the incidence or magnitude of fraud in the IHSS program and, therefore, estimates vary widely. Cost-benefit analyses should be offered along with any such proposals.

Fraud occurs within the IHSS program as it does in any government program or activity—not only those that serve low-income or disabled individuals. But most recipients of government funds or beneficiaries of government programs are not treated with the same level of suspicion.

The overwhelming majority of IHSS recipients are legitimately eligible to the services they receive. Application processes for many social services programs, however, increasingly resemble booking procedures. Careful consideration should be given to anti-fraud or program integrity efforts that unnecessarily stigmatize eligible recipients and providers based on unsubstantiated and unwarranted assumptions and generalizations.

None of the IHSS bills referred to the Human Services Committee over the 2009-2010 Legislative Session was enacted into law. (One resolution, **ACR 151 (Ma)**, was adopted.) However, the substance of several measures was ultimately enacted through budget trailer bills, including: **AB 1763 (Lieu)**, which would have obviated the need for many IHSS providers who provide services to individuals in more than one county to undergo multiple criminal background checks; **SB 141 (Maldonado)**, which required that IHSS timesheets include a legal certification signed by the provider and the recipient verifying that the information is true and correct; and **SB 142 (Maldonado)**, requiring DSS to develop a process by which providers receive a list of approved tasks to be performed for each recipient, and complete lists of tasks available under the IHSS program.